

Second Amended Complaint

FILED

JAN 11 2023

CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA
SAN JOSE OFFICE

Plaintiff's Name Francis A Humes
 Prisoner No. BR3697
 Institutional Address P.O. Box 689
Soledad CA 93960

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

Francis A Humes
 (Enter your full name)
 v.

Case No. 21-CV-08490 EJD
 (Provided by the clerk upon filing)

Deputy Torres
Monterey County Sheriff Det.
 (Enter the full name(s) of all defendants in this action)

COMPLAINT BY A PRISONER
 UNDER THE CIVIL RIGHTS ACT,
 42 U.S.C. § 1983

I. Exhaustion of Administrative Remedies.

You must exhaust available administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.

- A. Place of present confinement CTF Soledad
- B. Is there a grievance procedure in this institution? ☐ YES ☐ NO
- C. If so, did you present the facts in your complaint for review through the grievance procedure?
☐ YES ☐ NO
- D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue any available level of appeal, explain why.

1. Informal appeal: _____

2. First formal level: _____

3. Second formal level: _____

4. Third formal level: _____

E. Is the last level to which you appealed the highest level of appeal available to you?

☐ YES

☐ NO

F. If you did not present your claim for review through the grievance procedure, explain why.

II. Parties.

A. If there are additional plaintiffs besides you, write their name(s) and present address(es).

B. For each defendant, provide full name, official position and place of employment.

Deputy Torres Sheriff dep Monterey County (Individuals)
Monterey County Sheriff dept Jail

III. Statement of Claim.

State briefly the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

See Attached

IV. Relief.

Your complaint must include a request for specific relief. State briefly exactly what you want the court to do for you. Do not make legal arguments and do not cite any cases or statutes.

a declaration that the acts and omissions described violated Plaintiff's Rights

Compensatory Damages

Punitive Damages

A trial on all issues triable by Jury

Plaintiff's Costs in this Suit

any additional relief this Court deems just proper and equitable

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on:

1-9-23
Date

[Signature]
Signature of Plaintiff

Statement of Claims //

This Concerns the 14th Amendment rights of a pre-trial detainee who was confined to a wheelchair when he suffered life long injuries. The injuries are a direct result of Defendant Torres's deliberate indifference to plaintiff's safety. Plaintiff also alleges an A.D.A. Claim for failure of Monterey County Sheriff dept. to provide appropriate Court transportation. Petitioner also asks the Court to take pendent party Jurisdiction over the State-law Claims of negligence.

ON 08-02-2019 Monterey County Sheriff dept. Violated the provisions of the ADA and Rehabilitation act by failure to provide appropriate transportation, vehicle, equipment and operator

Plaintiff a pre-trial detainee requiring the use of a wheelchair due to mobility issues was a late add on for a Court appearance. He was pushed to Celly port and secured in restraints, Leg irons belly chain & shackles. (6) other passengers were already loaded and forced to wait an additional 20 minutes as (3) deputies, none being properly trained or familiar with the equipment or vans simplest operations/requirements. The extemporaneous transportation of A.D.A. Mobility impaired detainees in specialized vehicles by deputies without the specialized training required to competently operate the van and equipment necessary to load, secure and transport mobility impaired A.D.A. cannot be considered "Appropriate" by any standard. The reckless decision to provide a van to the transportation fleet before properly training deputies is Calous disregard to Health and Safety. The A.D.A. passenger is extremely vulnerable because of there dependancy on deputies.

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ON 08-02-2019 Defendant Torres acted with deliberate Indifference to plaintiff's 14th Amendment Rights as a pretrial detainee to health and safety.

Deputy Torres secured plaintiff with (2) other deputies help and departed Celly porta Jail Construction required a turn after initially heading north, this was done at Alvin and Natividad. The turn was approx 1/4 mile in wrong direction. Because of my confinement to wheel chair I was placed directly behind deputy Torres, deputy Torres had a unrestricted view because the partition was clear plexi glass. As we were finishing the turn my wheelchair was freed from the safety restraints and began rolling freely. The moment this happened I told deputy Torres of my serious and dangerous predicament and pleaded with Torres to stop and fix the straps. Torres acknowledged plaintiff's situation and requests but refused to stop. Any reasonably prudent person would immediately recognized the substantial risk of serious injury and stopped at the earliest possible safe location to properly secure wheelchair and prevent potential injury. Torres instead acted with deliberate indifference to plaintiff's health and safety by disregarding the seriousness of the situation and pleads by the plaintiff and passengers to stop the van and fix the straps before plaintiff is injured or killed. Torres responded that "Can't stop, nothing I can do, its gotta wait until we get to the Court house". This exchange took place just outside the Jails parking lot on the opposite side of the road, approx 10 minutes from Court house. Torres continued on his reckless path passing several opportunities to stop and resecure plaintiff's wheelchair to

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avoid the Substantial risk of injury to plaintiff. This already Serious and dangerous Situation was exacerbated by the increase in speed to a pace that caused wheel chair to move erratically. This in turn caused plaintiff and passengers to increase the pleads and urgency for torres to immediately stop and fix the Security Straps. As it was obvious to everybody on board that plaintiff was in a dire situation that required immediate assistance. After torres disregarded the seriousness of the situation he was made aware of for approx 2 minutes the plaintiff was flung from the wheel chair, tumbling backwards and Sustained Serious injuries. The physical spinal injuries and mental trauma still affect plaintiff's daily life. As he suffers from herniated/bulging discs C5-C6 with focal Central annular tear and nerve root abutment. Disc Bulging from L2-L5, Nerve damage and Mental/psychological ailments.

Torres acted with Calous deliberate indifference to the rights of plaintiff by willfully disregarding the plaintiffs need of immediate emergency medical and failed to protect plaintiff from additional exposure to the high probability and Substantial injury being inflicted after initially Sustained trauma because of the restricted ability to use arms and legs, the haphazard entanglement of Security restraints and the wheelchair while suffering a Seizure/Convulsions for what is believed

1 to be 5-10 minutes before Torres finally decided to
2 act in a reasonable way and stopped to place cell phone
3 call to what is believed to be his supervisor. Finally the
4 long over due responsibility of requesting emergency assistance
5 for trauma victim was facilitated, this delayed response
6 to the obvious and continued trauma induced by plaintiff
7 is the direct consequence of the actions or inaction of
8 duties in ^{required} ~~trusted~~ of Torres to respond in a reasonable
9 way to detainees serious injuries and obvious emergency
10 medical need which subjected plaintiff to additional
11 pain and injury.

12 After arrival of ambulance plaintiff was placed
13 unconscious and secured to gurney to prevent further
14 injury. Plaintiff suffered extreme humiliation as
15 a result of the inhumane treatment precipitating
16 the arrival of emergency services. Plaintiff was 1 of 7
17 detainees on board, 3 women and 3 men were witness
18 to the demoralizing disregard of situations substantial
19 risk of injury or death, that resulted in the obvious
20 consequences of refusing to secure plaintiff, that lead to
21 the onset of a seizure lasting between 5 & 7 minutes. Plaintiff
22 lost his bladder and dignity as he slipped around
23 the floor of a moving van that refused to respond in any
24 responsible way. Reasonably competent manner expected
25 of veteran deputy tasked with transporting ADA
26 detainees safely and securely back and forth to court
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Negligence-

1 Torres disregarded a policy and S.O.P in place
 2 AS a protection, prevention and assistance to unexpected
 3 Situations. The purpose of the Second deputy is peace,
 4 order and Security of persons he encounters and Situations
 5 encountered transpiring during the transportation of inmates
 6 to prevent the distraction of drivers
 7 - on 08-02-2019 Torres departed the Celly port with
 8 7 inmates and no 2nd officers.
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14th
Amend

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 11 Torres was made aware of the unexpected Situation
 12 leaving plaintiff unsecured and out of Control. ~~erratic~~
 13 Torres being aware and obligated to assist the prevention
 14 of Serious injury and the required professional duties
 15 of officers hired and obligated to protect and respect
 16 the Civil Rights of persons he encounters in the Course
 17 of his duties acted without reason or effectiveness.
 18 1) Should of Radioed the poss. emergency Situation
 19 ^{being confronted} encountered as required by protocol.
 20 2) After being Made aware of the obvious and Substantial
 21 risk of Serious injury to a wheelchair bound inmate not Secured
 22 Correctly and rolling freely in the rear of a moving Van any
 23 reasonable officer would of reacted immediately, Stopping
 24 and assessing options to prevent Subjecting plaintiff to
 25 the Substantial risk of Serious injury.
 26 3) The Consequence of Torres's disregarding the duty and
 27 opportunity to prevent the obvious and preventable Substantial
 28 risk to plaintiff of Serious injury or death.

1 resulted in plaintiff suffering serious injuries
2 that could and should of been avoided. Plaintiff
3 Has several bulging disks, Nerve damage, Mental trauma
4 and suffers the occasional seizure. This accident
5 changed the course of everything and is the sole reason
6 I'm unable to resume my career and owner responsibilities
7 as sole proprietor of Peninsula Asphalt and Concrete.
8 The Domino effect ~~from~~ that followed the life
9 changing trauma sustained by plaintiff took away
10 his physical capabilities and replaced it with P.T.S.D
11 that makes the cognitive skills necessary to arrange
12 the logistics unrealistic.

13 4) Torres failed to respond in a reasonable way to the
14 known dangers of delaying medical attention to
15 the victim of serious trauma and head injuries that
16 provoked the onset of seizure that went unattended
17 to for close to 10 minutes before finally stopping to
18 request medical emergency assistance. The seriousness
19 of plaintiff's situation was known and disregarded
20 as were cries and screams of witnesses from the
21 initial injury happening nearly 10 minutes prior to
22 requesting emergency assistance.

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State tort Claim

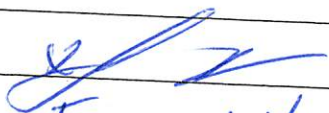
Deputy Torres acted with gross negligence on 08-02-2019 when he willfully and recklessly disregarded a policy in place requiring transportation units be occupied by (2) officers while during transportation of detainees. It prevented the protections the policy was designed to guarantee. Torres broke policy and attempted to transport 7 inmates without mandated assistance.

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1 Verification

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3 I have read the foregoing Complaint and
4 hereby verify that the matters alleged therein are
5 true, except as to matters alleged on information
6 and belief, and, as to those, I believe them to be
7 true. I Certify under the penalty of perjury
8 that the foregoing is true and correct.
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11 Executed at Soledad CA on 1-7-2023
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14 Francis A Humes
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